

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Manna Freight Systems, Inc., d/b/a)
Orion Air Ride, a Minnesota corporation,)
vs.)
Plaintiff,)
Steve Silver Company, Inc., a Texas)
corporation,)
Defendant.)

**COMPLAINT
JURY TRIAL DEMANDED**

For its Complaint against defendant Steve Silver Company, Inc. ("Steve Silver Co."), plaintiff Manna Freight Systems, Inc. d/b/a Orion Air Ride ("Orion") states and alleges as follows:

PARTIES, JURISDICTION AND VENUE

1. Orion is a Minnesota corporation with its principal place of business located in Mendota Heights, Minnesota. Orion provides nationwide furniture transportation and delivery services.
2. Steve Silver Co. is a Texas corporation with its principal place of business located in Forney, Texas. Steve Silver Co. is a global furniture company.
3. Jurisdiction in Minnesota in this Court is proper because this case is between citizens of different States and the amount in controversy exceeds \$75,000, exclusive of interest and costs.
4. Venue is proper in this judicial district because Steve Silver Co. agreed to the jurisdiction and venue of the Minnesota courts sitting in Hennepin County pursuant to the terms of the contract that it has breached and is the subject of this action. The parties agreed in writing that: "[a]ny dispute arising out of or relating to this agreement shall be resolved through

litigation in a state or federal court of competent jurisdiction located in Hennepin County, Minnesota. [Steve Silver Co.] consents to personal jurisdiction in the court of Minnesota and waives any right to bring an action against Manna elsewhere, or to seek transfer of any action venued in Minnesota to another jurisdiction.”

BACKGROUND

5. On or about June 18, 2013, Orion and Steve Silver Co. entered into a logistics management services agreement (the “Agreement”) pursuant to which Orion agreed to provide international and/or domestic ground freight forwarding, consolidating, and logistics management services in accordance with an established system of service rates and charges.

6. The initial term of the Agreement was for a one year period, subject to termination by either party upon sixty days written notice of intent to terminate.

7. Steve Silver Co. agreed to pay for all ground freight forwarding, transportation and/or consolidating services at the rates and charges specified in a Statement of Work that is attached to the Agreement. In turn, Orion agreed to pay the third party carriers for services and equipment provided under the Agreement.

8. Steve Silver Co. agreed to pay Orion for its services within thirty days of the invoice.

9. Steve Silver Co. agreed that it was its responsibility to “[p]rovide accurate weight and Product sizes for all Ship Requests.” The parties agreed that the pricing rate to be charged was based upon per pound to be shipped, with a minimum charge, as reflected in the Statement of Work.

10. Orion paid its carriers and agents for all shipments made on behalf of Steve Silver Co. pursuant to the Agreement based upon the weights of each shipment as determined by Steve Silver Co.

11. Steve Silver Co. agreed to indemnify and hold Orion harmless from and against any third party expenses resulting from or related to its negligence or performance or failure to perform under the terms of the Agreement.

12. Orion invoiced Steve Silver Co. in the total amount of \$419,943 for the time period between July 2013 and February 2014. Steve Silver Co.'s last payment toward Orion's outstanding invoices was made on January 13, 2014. A balance of \$94,041 is outstanding in unpaid invoices to Steve Silver Co. for services performed by Orion pursuant to the Agreement.

13. Orion provided written notice to Steve Silver Co. of the outstanding amount payable by Steve Silver Co., and Steve Silver Co. has refused to pay.

14. The Agreement provides that if Orion prevails in any action to obtain payment for services, to obtain other legal or equitable relief, or to defend against any claim(s) brought by Steve Silver Co., it "shall be entitled to an award of reasonable attorneys' fees."

15. The Agreement is to be interpreted and governed by the laws of Minnesota.

16. Orion has incurred collection costs and reasonable attorneys' fees in its attempt to collect upon the payments due from Steve Silver Co. under the Agreement. Steve Silver Co. is liable to Orion for these costs, fees and expenses.

17. Just recently while the parties were in discussions about Steve Silver Co. paying Orion for the overdue invoices, Steve Silver Co. breached the Dispute Resolution section of the Agreement by serving a Complaint upon Orion captioned in Kaufman County, Texas relating to the Agreement. The parties agreed that all disputes relating to the Agreement would be resolved

in state or federal court located in Hennepin County, Minnesota. The service of a Complaint on Orion venued in Kaufman County, Texas constitutes a breach of the Agreement. Orion has been forced to incur legal fees to seek a dismissal of that Complaint in Texas, which legal fees and expenses Steve Silver Co. is liable for under the Agreement.

COUNT I
BREACH OF CONTRACT- NON-PAYMENT

Orion incorporates by reference the foregoing paragraphs as though fully set forth herein.

18. Steve Silver Co. entered into the Agreement with Orion.
19. Steve Silver Co. has breached the Agreement by failing to timely pay Orion's invoices when due.
20. Orion has performed its obligations under the Agreement.
21. As a result of Steve Silver Co.'s breaches, Orion has suffered and will continue to suffer damages in excess of \$94,000, in addition to its collection costs, expenses and attorneys' fees. Steve Silver Co. is liable to Orion for these damages, costs, expenses and attorneys' fees.

COUNT II
BREACH OF CONTRACT- DISPUTE RESOLUTION

Orion incorporates by reference the foregoing paragraphs as though fully set forth herein.

22. Steve Silver Co. entered into the Agreement with Orion.
23. Steve Silver Co. has breached the Agreement by serving a Complaint relating to the Agreement in Kaufman County, Texas, which Complaint is subject to dismissal pursuant to the parties' dispute resolution agreement, Section 19 of the Agreement.
24. As a result of Steve Silver Co.'s breach, Orion has suffered and will continue to suffer damages in the form of attorneys' fees and expenses in obtaining a dismissal of the

improperly commenced action in Texas. Steve Silver Co. is liable to Orion for these damages, costs, expenses and attorneys' fees.

PRAYER FOR RELIEF

WHEREFORE, Orion respectfully requests this Court enter judgment against Steve Silver Co. as follows:

1. An award of damages against Orion in an amount of its damages in the excess of \$100,000;
2. An award of interest, costs, disbursements, litigation expenses, and attorneys' fees as allowed under the law and by the terms of the Agreement; and
3. For such other and further relief as the Court deems just and equitable.

JURY TRIAL DEMAND

Orion hereby demands a jury trial on any and all claims so triable in this matter pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

Date: July 11, 2014

**ANTHONY OSTLUND
BAER & LOUWAGIE P.A.**

By: s/Janel M. Dressen
Janel M. Dressen, #302818
90 South Seventh Street, Suite 3600
Minneapolis, MN 55402
(612) 349-6969

ATTORNEYS FOR PLAINTIFF